IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Steven F. Wolff	
Plaintiff,	)
v.	) Case No. 16 CV 3348
	)
	)The Honorable: **Matthew F. Kennelly**
Seedays (Illinois) LLC	)Magistrate Judge: **Susan E. Cox**
And Dmitry Isaev	)
individually and in his	)
Official capacities as an "employer" as defined	)
Under Illinois law and FLSA	)
	) **<u>Jury Trial Demanded</u>**
Defendants.	)

<u>PLAINTIFF'S REQUEST FOR ADDITIONAL REMEDIES</u>

NOW COMES BEFORE THIS HONORABLE COURT, Plaintiff, Steven F. Wolff ("Plaintiff"), by his attorney JOHN IRELAND, Moves this Honorable Court for an Order containing the following: 1) An Award for Plaintiff's owed salary in accord with the Illinois Wage Payment and Collection Act (IWPCA) 2) An Award of a 2% statutory penalty for the violation of the IWPCA 3) An Award of Pre-Judgment Interest under Illinois Law 4) an Award of Liquidated Damages under the FLSA against the Defendants alleges as follows:

1. This civil action is brought by Steven Wolff (Plaintiff) who seeks redress for the Defendant's violations of his rights under the Fair Labor Standards Act, 29 U.S.C. § 201, et. seq. and for violations of the Illinois Minimum Wage Act ("IMWA"), 820 ILCS §105 et seq and Illinois Wage Payment and Collection Act (IWPCA).

2. Plaintiff has received a Default Judgment from this Court. (see Docket Document # 34).

3. This Court set the Prove-Up of the Plaintiff's Damages for March 30, 2017 and requested the proofs via Affidavit.

4. In a Prove-Up of Plaintiff's damages Plaintiff now submits to the court an Affidavit providing sworn testimony as follows:

   a. Plaintiff was an employee of the Seedays (Illinois) LLC (Hereinafter referred to as "Seedays"). (See Affidavit of Plaintiff Steven Wolff, attached to this Motion as Exhibit 1, ¶3).

   b. Plaintiff was an employee of Seedays.

   c. Plaintiff and Seedays had a wage Agreement (as per the IWPCA) that Plaintiff was to be paid a salary $8,333.00 per week before taxes and deductions. (see Affidavit Exhibit 1)

   d. However, beginning in January of 2015, Seedays failed to pay any wages to Plaintiff from Mid-January to April of 2015. (Ex 1 ¶ 5).

   e. During this time, January to April of 2015 Plaintiff continued to work until he quit due to non-payment of wages. (Ex 1 ¶ 6)

   f. Plaintiff is owed wage payments in accord with the IWPCA Agreement between Plaintiff and Defendant Seedays. (Ex 1. ¶ 7)

   g. The unpaid wages totals five pay periods and/or 10 weeks from 1/14/15 to 4/1/15. (Ex. 1 ¶ 8)

   h. Thus Plaintiff is owed his Agreed-To salary of $8,333.00 multiplied by five (5) for a total of $41,665.00. (Ex 1 ¶ 9).

   i. Additionally for the five pay periods Plaintiff was paid no wages, despite working approximately 50 hours per week. (Ex. 1 ¶ 10)

   j. Thus Plaintiff was paid no wages for his forty hours of work and ten hours

of overtime work. (Ex. 1 ¶ 11)

5. Plaintiff now asks the court to Enter An Order including the following :

    a. An Award for Plaintiff's owed salary for five pay periods in accord with the parties IWPCA Agreement to pay Plaintiff a weekly salary.

    b. An Award of a 2% statutory penalty for the violation of the IWPCA.

    c. An Award of Pre-Judgment Interest

    d. An Award of Liquidated Damages under the FLSA

6. Plaintiff was employed by the Defendant as an employee of Defendants. (Exhibit 1, ¶¶ 3-4).

7. Plaintiff was not paid for all hours worked in violation of the Fair Labor Standards Act ("FLSA") and/or the IWPCA. (Ex. 1 ¶¶ 5-11).

8. Plaintiff has now submitted via Affidavit proofs of failure to pay wages/salary by the Defendant as well as other proofs. (see Exhibit 1)

9. Due to Defendant's violation of the FLSA, the Plaintiff is entitled to recover from Defendant his unpaid compensation, reasonable attorneys' fees, and the costs of this action, pursuant to IWPCA. 820 ILCS 115/1-15.

10. However, Plaintiff also asks for additional penalties applicable under the relevant statutes for the Defendant's failures to pay Plaintiff's wages.

IWPCA 2% PENALTIES

11. The IWPCA allows for a 2% penalty monthly penalty for failure to pay wages based on Agreement between the parties. 820 ILCS 115/14.

12. The Plaintiff calculates the IWPCA 2% penalty as follows

Date of wages	Salary due	X 2% Of the Unpaid wages	Months of unpaid overtime	Months X 2%	Totals	
2/1/15	8,333.00	$166.66	25 months	$4,166.50	$4,166.50	
2/15/15	8,333.00	$166.66	25months	$4,166.50	$8,333.00	
3/1/15	8,333.00	$166.66	24 months	$3,999.84	$12,332.84	
3/15/15	8,333.00	$166.66	24 months	$3,999.84	$16,332.68	
4/1/15	8,333.00	$166.66	23 months	$3,833.18	$19,165.86	

13. Wherefore Plaintiff asks this court to enter an Order Finding IWPCA 2% penalty in the amount of $19,165.86.

Pre-judgement Interest

14. Plaintiff also asked for all applicable penalties applicable under Illinois law for includes prejudgment interest.

15. The statutory authority for the award of prejudgment interest is section 2 of the Interest Act (815 ILCS 205/2 (West 2012)), which prescribes an award of interest on "all moneys after they become due on any *** instrument of writing." And "on money withheld by an unreasonable and vexatious delay of payment". (Id)

16. Here both apply; the monies owed to Plaintiff were due on instruments of writing, here those "instruments of writing" take the form of Defendant pay records, time records and paychecks. (see Affidavit and Affidavit Ex. 1)

17. All these documents were in writing, showing the work performed by Plaintiff, and the agreed rate of pay, yet Defendant failed to pay overtime wages. (Id.)

18. Further the delay is beyond reasonable and is clearly vexatious in its delay.

19. Plaintiff calculates the prejudgment interest as follows:

    a. 5% per year times the gross owed wages of $41,665.00

20. Plaintiff was owed the wages ending in April 1, 2015, or one year and elven months of delay.

21. Plaintiff calculates this interest as follows:

    a. $41,665.00 X 5% = $3,041.55 for one year

    b. $3,041.55 divided by 12 x 11 months= $2,788.08 for 11 months

22. Plaintiff asks the Court to also enter an Order for Pre-Judgment Interest in the amount of $5,829.63 against Defendants.

LIQUIDATED DAMAGES

23. Lastly, the FLSA allows for a penalty of Liquidated Damages for failures to pay overtime and or minimum wages. 29 U.S.C. § 216 (b).

24. Plaintiff does not seek duplicate damages for owed wages, but does seek additional remedies available under different statutes; here Plaintiff seeks wages and 2% penalty under the IWPCA and Liquidated Damages under the FLSA.

25. Plaintiff calculates the FLSA liquidated damages as follows:

    a. Federal minimum wage rate is $7.25 per hour and $10.87 per hour for overtime.

    b. Plaintiff worked approximately 50 hours per week. (Ex 1 ¶ 10)

    c. Thus Plaintiff worked 40 hours straight time and 10 hours of overtime.

d. 40 hours X $7.25 = $290

e. 10 hours X $10.87 = $108.70

f. Total minimum wage and overtime violations equals $398.70 per week.

g. $398.70 X 10 weeks unpaid wages = $3,987.00

h. Thus Plaintiff asks for liquidated damages equal to the minimum wage and overtime violations in the amount of $3,987.00.

WHEREFORE Plaintiff Prays that this Honorable Court enter an Order as follows:

i. An Award for Plaintiff's owed IWPCA Agreement in the amount of $41,665.00.

ii. An Award for IWPCA 2% monthly penalties in the amount of $19,165.86.

iii. An Award of Liquidated Damages equal to the Plaintiff's owed overtime wages in accord with the FLSA in the amount of $3,987.00.

iv. An Award of Pre-Judgment Interest in the amount of $5,829.63

v. Entry of the attached draft Judgment Order, (attached draft Judgment Order attached to this Motion as Exhibit 2).

vi. Other relief that is just and right.

Dated: MARCH 28, 2017   Respectfully submitted,

                                         STEVEN WOLFF
                                         By: _____/s/ John C. Ireland_____

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